

44620
DO

SEVICE DATE – AUGUST 10, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 337 (Sub-No. 7X)

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION—ABANDONMENT EXEMPTION—IN SCOTT COUNTY, IOWA

Decided: August 10, 2015

Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific (DM&E) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.66-mile line of railroad referred to as Blackhawk Spur, between milepost 0.33+/- and milepost 0.99 +/- in Scott County, Iowa. Notice of the exemption was served and published in the Federal Register on December 24, 2013 (78 Fed. Reg. 77,791). The exemption was scheduled to become effective on January 23, 2014.

By decision served on January 22, 2014, the Board imposed two environmental conditions recommended by the Board's Office of Environmental Analysis (OEA). The conditions require DM&E to: (1) prior to conducting any salvage activities, consult with the Iowa Department of Natural Resources (DNR) to address DNR's concerns about the use of Best Management Practices to protect water quality and to determine the applicability of DNR's air quality program requirements; and (2) (a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f; (b) report back to OEA regarding any consultations with the Iowa Department of Cultural Affairs, State Historic Preservation Office (SHPO) and the public, and (c) be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

In a Supplemental Final Environmental Assessment dated July 15, 2015, OEA states that on June 18, 2015, DM&E forwarded correspondence dated March 23, 2015, from the Office of the State Archeologist at the University of Iowa regarding its archaeological site background check that was conducted at the recommendation of the SHPO and that indicated that no archaeological site has been reported within or near the project area. OEA states that, based on consultations with the SHPO and DM&E, it has determined that the proposed abandonment would not adversely affect historic properties listed in or eligible for inclusion in the National Register. Accordingly, OEA recommends that the Section 106 condition be removed (Condition 2).

OEA also states that, in the March 23, 2015 letter, the Office of the State Archaeologist stated that, if any archaeological resources or signs of a human burial are discovered during salvage activities, work in the area of the discovery should stop and further consultations should be undertaken. In response to the Office of the State Archaeologist's concern, OEA recommends that the following new condition be imposed: (a) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, DM&E shall immediately cease all work and notify OEA, appropriate federally recognized tribes, and the SHPO, pursuant to 36 C.F.R. § 800.13(b); and (b) OEA will then consult with the SHPO, appropriate federally recognized tribes, DM&E, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Consistent with OEA's recommendations: (1) the previously imposed Section 106 historic preservation condition will be removed (Condition 2); (2) the previously imposed environmental condition requiring consultation with DNR to address DNR's concerns about the use of Best Management Practices to protect water quality and to determine the applicability of DNR's air quality program requirements will remain unchanged (Condition 1); and (3) the recommended additional condition to address the concern regarding unanticipated discoveries of archaeological resources or signs of human burial during salvage activities will be imposed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The Section 106 historic preservation condition imposed in the January 22, 2014 decision is removed.
3. In addition to Condition 1 regarding consultation with DNR imposed in the January 22, 2014 decision, DM&E's abandonment exemption is subject to the new environmental condition as follows: (2)(a) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, DM&E shall immediately cease all work and notify OEA, appropriate federally recognized tribes, and the SHPO, pursuant to 36 C.F.R. § 800.13(b); and (b) OEA will then consult with the SHPO, appropriate federally recognized tribes, DM&E, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.